?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 27.04.2019
*CORAM
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

+Crl.A.(MD).Nos.185 OF 2014
and 207 of 2014

#Arulraj
...Appellant/Accused No.3
in Crl.A.(MD)No.185/2014

Sirajudeen ...Appellant/Accused No.1
in Crl.A.(MD)No.207/2014

Vs.

$State represented by
Inspector of Police,
Vigilance and Anti~Corruption,
Trichy. (Crime No.07/2010) ...Respondent/Complainant
in both the appeals

Common Prayer:~ Criminal Appeals filed under Section 374 (2) of Criminal Procedure Code, to set aside the Judgment and conviction passed against the appellants by the Special Court for Trial of Cases under The Prevention of Corruption Act, Trichy in Special Case No.75 of 2012, dated 12.06.2014.

!For Appellant in
Crl.A.(MD)No.185/2014 : Mr.T.Senthil Kumar
For Appellant in
Crl.A.(MD)No.207/2014 : Mr.K.Sundaravel
^For Respondent in
both the appeals : Mr.K.K.Ramakrishnan
Addl. Public Prosecutor

:COMMON JUDGMENT

These appeals are directed against the judgment of the learned Special Court for Trial of Cases under The Prevention of Corruption Act, Trichirappalli in Special Case No.75 of 2012, dated 12.06.2014.

2.Since both the Criminal Appeals arise out of a Common Judgment, they were heard together and they are disposed of by means of this Common Judgment. The appellant in Crl.A.No.185 of 2014 was the third accused and the appellant in Crl.A.No.207 of 2014 was the first accused in S.C.No.75 of 2012

on the file of the learned Special Court for Trial of Cases under The Prevention of Corruption Act, Trichy.

3.For the sake of convenience, the parties are referred to as per the rank mentioned in the trial Court. The gist of the charges framed against the appellants/Accused and the findings/sentence of the trial Court are as noted below:

Name of Accused	Charges	Finding	Sentence
Arulraj (A.3)	Secs.12 read with Section 7 of Prevention of Corruption Act, 1988.	Found guilty under Section 12 of Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/~ and in default of payment of fine, the accused shall undergo simple imprisonment for one month, for the offence under Section 12 of the Act.
Sirajudeen (A.1)	Secs.7, 12 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.	Found guilty under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/~ and in default of payment of fine, the accused shall undergo simple imprisonment for one month, for the offence under Section 7 of the Act. To undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/~ and in default of payment of fine, the accused shall undergo simple imprisonment for three months, for the offence under Section 13(2) r/w 13(1)(d)of the Act. The sentences will run concurrently.

Challenging the said conviction and sentence, the appellants/A.1 and A.3 are before this Court with these Criminal Appeals.

4.Brief facts leading to these appeals are as follows:

(i).P.W.2~S.P.Arjunan, the defacto complainant is a practising Advocate for the past 15 years in Trichy Courts and having an residence at Pitchandar Koil Village, Mannachannallur Taluk, Trichy District and he owned 20 cents of land in Survey No.63/2B. The said land was situated adjacent to the proposed four ways project from Samayapuram Tollgate to Chennai, in which, the Highways Department made a paper publication for acquiring 105 square meter from his land and he made an objection and after considering the objection, the same was rejected and an extent of 105 sq.meter was acquired and thereafter, in the year 2009, an award was passed fixing the compensation and in order to receive the compensation, he went to the office of Special Tahsildar, Land Acquisition, Trichirappalli, on 24.02.2010 at 2.00 p.m. and

met the Special Tahsildar, Land Acquisition, the second accused and asked her to issue a cheque. The second accused issued a cheque for an amount of Rs.5,46,693/~. P.W.2 received the cheque, after recording his objection. The second accused told with P.W.2 that he could appeal to the Collector for higher compensation after 10 to 15 days and she want to discuss a matter with him and accordingly, on 10.03.2010 at about 12.20 p.m., P.W.2 went to the office of the Special Tahsildar and on verification found that the second accused was not available in the office. The first accused informed P.W.2 that the second accused had been transferred and left out and thereafter, P.W.2 met the first accused in his office and A~1 invited P.W.2 and enquired whether he came for collecting the proceedings, for which, P.W.2 replied -yes- and thereafter, the first accused demanded Rs.5,000/~ for furnishing the award proceedings. P.W.2 enquired why he has to pay Rs.5,000/~, for that, the first accused instructed P.W.2 that he should pay separately to the second accused. Since P.W.2 was hesitating to pay the amount, for which, A~1 replied that without paying any amount, that too, for the more compensation awarded, the proceedings cannot be issued. Even A~2 was transferred, P.W.2 necessarily to satisfy A~2 for the purpose of collecting the proceedings. Further, P.W.2 enquired about the residence of A~2 and again after collecting the address, he went to A~2-s house and informed the A.1-s (Sirajudeen) information, for which, A~2 replied that she only processing the matter and therefore, she demanded only Rs.1,000/~ and the said amount may be handed over to A~1 and thereafter she will collect the amount from A~1. Immediately, P.W.2 left the place. Since the defacto complainant has not interested in paying the bribe amount to the accused officers, he had decided to file a complaint before P.W.12~~Inspector of Police, District Vigilance and Anti Corruption Wing, Tiruchirappalli, under Ex.P.2.

(ii)The Inspector of Police, received the complaint under Ex.P.2 and registered the First Information Report in Crime No.07 of 2010 under Ex.P.11. After registering the FIR, P.W.12~Trap Laying Officer deputed two official witnesses viz., P.W.3 (Sivasubramanian) shadow witness and one official witness Nagarajan. Thereafter, as per the instructions of P.W.12, P.W.3 and the official witness came to the office of the Vigilance and Anti~ Corruption. Thereafter, P.W.12 conducted the phenolphthalein rehearsal test in the presence of P.Ws.2 and 3 and the official witness, for which, the amount of bribe to the tune of Rs.6,000/~ consisting of six 1000 rupee currency notes~M.O.5 series, were received and smeared with phenolphthalein powder. P.W.12 prepared entrustment mahazar under Ex.P4 and after that, the said money was handed over to P.W.2 and that P.W.3 was instructed to accompany with P.W.2. Thereafter, P.Ws.2 and 3 were alighted reminding with earlier instructions to go and meet the first accused. Accordingly, P.Ws.2 and 3 went to the office of the first accused and P.W.2 handed over the sum of Rs.6,000/~ to the first accused. The first accused received the same by saying that he could pay the same and receive the proceedings on the previous day itself, for which, P.W.2 said that he had no money on the previous day and P.W.2 said that as instructed by the first accused, he met the second accused at her residence and she instructed him to pay the sum of Rs.1,000/~ for her and also instructed to pay the same with the first accused. Thereafter, the first accused after seeking P.W.2 doubtfully told as to whether the currency notes are genuine and then received and counted the

same. Thereafter, the first accused called the third accused and handed over the said sum of Rs.6,000/~ with him. Thereafter, P.Ws.2 and 3 came out of the office and gave the pre~arranged signal. Immediately, P.W.12 went inside the office of the first accused and identified the accused. Thereafter, P.W.12 recovered the tainted money and compared the same with the entrustment mahazar, which is found tallied. P.W.12 prepared a seizure mahazar under Ex.P.5; observation mahazar Ex.P.17 and rough sketch Ex.P.18 and brought the accused along with M.Os. to the Vigilance office. Thereafter, P.W.12 sent the accused officer for judicial custody and handed over the case records to P.W.13, the Inspector of Police, Vigilance and Anti~Corruption, Tiruchirappalli, for further investigation.

(iii).P.W.13, the another Inspector of Police, Vigilance and Anti~ Corruption took up further investigation in this case. He examined the other witnesses and obtained sanction orders to prosecute the case, as against the accused and after completion of investigation, he laid charge~sheet as against the accused for the offence stated above.

5.To substantiate the charges against the accused in trial, on the side of the prosecution, P.Ws.1 to 13 were examined and Exs.P.1 to 22 were marked and M.Os.1 to 7 were produced. When the accused were questioned about the incriminating circumstances, they denied the same as false. In order to prove the same, D.W.1 was examined and Exs.D.1 to D.5 were marked.

6.Upon consideration of the oral and documentary evidence, the learned Judge found guilty of the third accused and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/~ and in default of payment of fine, the accused shall undergo simple imprisonment for one month, for the offence under Section 12 of the Act. The learned Judge has also found guilty of the first accused and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs.5,000/~ and in default of payment of fine, the accused shall undergo simple imprisonment for one month, for the offence under Section 7 of the Act and to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/~ and in default of payment of fine, the accused shall undergo simple imprisonment for three months, for the offence under Section 13(2) r/w 13(1)(d)of the Act. The sentences were ordered to run concurrently. Aggrieved over the above said conviction, the appellants/A.1 and A.3 have preferred the present appeals.

7.Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent.

8.Assailing the findings of the trial Court, the learned counsel appearing for the appellant/first accused in Crl.A.(MD)No.207 of 2014, would submit that admittedly, P.W.2~defacto complainant in his evidence indicates that on 11.03.2010, he went to the office of the first accused at 12.45 a.m. and immediately entering into the office, he handed over the sum of Rs.6,000/~ to A.1 and thereafter, A.1 said that the defacto complainant could pay the same and receive the proceedings on the previous day itself, for that, P.W.2 replied that he had no money on the previous day and that he paid Rs.5,000/~ for A.1 and Rs.1,000/~ as demanded by A.2. Accordingly, Rs.6,000/~

was handed over in the presence of P.W.3 and after seeing P.W.3, A.1 asked with smiling face whether the currency notes were good notes and thereafter, received and counted the money and called A.3 and handed over the said money to him. However, the said evidence is not correlated with the evidence of P.W.3, wherein P.W.3 says that when they entering into the office of the first accused, P.W.2 wishes A.1 by calling Surveyor Sir and thereafter, A.1 demanded money from P.W.2 and thereafter, P.W.2 replied that I have brought Rs.5,000/~ for yourself and Rs.1,000/~ for A.2. Thereafter, he handed over the money to A.1. After counting the said money, he handed over the same to A.3. Thereafter, A.3 put it in his pocket. Both the evidence of P.Ws.2 and 3 is not corroborated with each other and it is contrary in nature. In fact, in the cross examination, P.W.2 categorically admitted that there was a previous DVAC proceedings pending against him and after enquiry, his name was deleted. In view of the earlier proceedings, the evidence of P.W.2 is suspicious one and hence, the registration of the complaint itself is false.

9.The learned counsel for the appellant/first accused would further submit that the prosecution did not establish the initial demand, which is allegedly made on 24.02.2010 and the defacto complainant itself admitted that he had already known to A.2~Tahsildar for the past 20 years and he well known to A.2, in which, he collecting the address from A.1 itself is suspicious and hence, there is no demand by A.1 and the alleged initial demand is an imaginary one.

10.The learned counsel for the appellant/first accused would further submit that at the time of land acquisition proceedings, the appellant/first accused measured his property and while he measuring the property, P.W.2 requested him to measure the property at some extent, in which, he got annoyed in the action of A.1, thereby implicated A.1 with mala fide intention and mere possession of the tainted money will not constitute the offence against the accused, unless the prosecution proved the demand and acceptance. However, the trial Court without considering the said aspect, convicted the accused, which is un~sustainable one and hence, he prayed for allowing of the appeal and acquittal of the appellant.

11.The learned counsel for the appellant in Crl.A.(MD)No.185 of 2014/third accused would submit that the appellant/third accused is a Junior employee of Survey Department and he is standing at the time of trap proceedings, in front of A.1 and he did not know what transaction was going on in between P.W.2 and A.1. Without getting explanation from A.1, being a subordinate officer, he has no option except to receive the amount and accordingly, he received the said money. Even as per Section 12 of the Prevention of Corruption Act, the necessary ingredients has to be established by the prosecution to prove that the appellant/A.3 is an abetter abetting the crime with A.1. In the present case, P.W.2 itself in the cross examination clearly deposed that he never met A.3 in the previous occasions, along with A.1. Hence, the ingredients under Section 12 of the Act, is not established. In the absence of any demand or voluntary acceptance of the illegal gratification, the implication of A.3 in the above said case is un~ sustainable in law. In support of his contention, the learned counsel for the appellant/A.3 has relied upon the following Judgments:~

(i)In TRILOK CHAND JAIN v. STATE OF DELHI, reported in 1975 (4) SCC 761, wherein the Hon-ble Apex Court, at paragraph Nos.11 to 14 and 16, has held as under:~

?11.Another aspect of the matter which has to be borne in mind is that the sole purpose of the presumption under s. 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences under s. S (1) (2) of the Prevention of Corruption Act and s. 161, Penal Code. The presumption therefore can be used in furtherance of the prosecution case and not in derogation of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as still born.

12.Let us now consider the facts of the present case in the light of the principles enunciated above. The testimony of its star witness, S. K. Jain (P.W. 1) is that it was Inspector Gupta who had demanded that ~ money as a motive or reward tor expediting the installation of the power connection and that the money was handed over to the appellant only for transmission to Gupta in pursuance of the latter-s instructions given to the complainant earlier in the morning. It is not the case of the complainant that the appellant had ever demanded any bribe from the complainant, or that the appellant was present on any occasion on which Gupta had demanded the bribe. Nor has it been shown by the prosecution that the appellant was in any way officially concerned with the installation of the poles or the giving of the electric connection. At the material time according to the appellant he was working as a mere labourer or Mazdoor in the first floor of the D.E.S.U. Office at Shahdara. This fact is not controverted by the prosecution. Of course, it is in evidence that on coming to the factory of the complainant at about 2 P.M., the appellant first went to see the labour working at the installation site and then went to the complainant to receive the money saving that he has been sent by Gupta to fetch it.

13.Mr. Gobind Das, the learned Counsel for the State contends that this conduct of the appellant in checking the labour, showed that he was not an innocent carrier of the money for Gupta but knew that it was being obtained as a bribe in connection with the installation of the power connection. In any case, maintains the Counsel the appellant was guilty of abetment of an offence under sec, 161 Penal Code and s. 5 of the Act.

14.We are unable to accede to this contention. In our opinion, this Act of the appellant was a neutral circumstance. It was not indicative of a guilty mind. The appellant explained that he had checked the labour working at site because he had been asked to do so by Inspector Gupta. This conduct of the appellant, therefore, was no ground to hold that he had received the G.C. Note of Rs. 100/~ with the requisite mens rea. Evidently in collecting this currency note from the complainant he was Acting only as an innocent tool of Gupta. He was a mere labourer. Even in that humble position, he was not a member of the gang working at the installation site in the factory of the complainant. He was not concerned ill his official capacity with the installation work or the giving of power connection. Being an unconcerned

menial, he was incapable of showing any favour or rendering any service to the complainant in connection with his official duties. One of the essential ingredients of the offence under s. 161, I.P.C. with which the appellant stands charged is, that the gratification must have been received by the accused as a motive or reward for committing an act or omission in connection with his official functions. lt must be shown that there was an understanding that the bribe was given in consideration to some official act or conduct. It is true that in law the incapacity of the government servant to show any favour or render any service in connection with his official duties does not necessarily take the case out of the mischief of these penal provisions. Nevertheless, it is an important factor bearing on the question as to whether the accused had received the gratification as a motive or reward for doing or for hearing to do any official act or for showing any favour or disfavour in the exercise of his official functions. This question as to whether the government servant receiving the money 354 had the requisite incriminatory motive is one of fact. Could it be reasonably said in the circumstances of the instant case that the money was handed over to the appellant or received by him as a motive or reward such as mentioned in s. 161, Penal Code ? It is nobody-s case that while collecting the sum of Rs, 100/~, the appellant made any representation, claim or promise, whatever, that he would either himself or through Gupta get an official act done for the complainant. Indeed, a prudent businessman like Jain would never pay such a substantial amount as a bribe to a mere Class IV servant in consideration of any promise of favour or service held out by the latter. Such a tall claim or promise to do favour or service by a menial would be manifestly quixotic. It would not pass muster. Indeed the complainant did not hand over the money till he after repeated enquiry, was convinced that the appellant was asking for money not for himself but for Gupta and had been sent by the latter to collect an(l fetch it from the complainant. The conduct attributed by P.W. 1 to the appellant was not incompatible with the role of an innocent carrier. Thus, paradoxical as it may seem, the very story propounded by the complainant (P.W. 1) negates the presumption, nipping it~as it were~in the bud.

16.Nor can the appellant be held guilty of abetting the alleged attempt made by Gupta to obtain the illegal gratification. Intention to aid The commission of the crime, is the gist of the offence of abetment by aid. Such intention, on the part of the appellant was lacking in this case. Moreover, Gupta, the principal, has been acquitted and exonerated of committing the offending act, the commission of which is alleged to have been aided by the small fry, the appellant.?

(ii).In K.SUBBA REDDY v. STATE OF A.P., reported in 2007 (8) SCC 246, wherein the Hon-ble Supreme Court at paragraph Nos.8 and 10, has observed as follows:~

?8.In support of the appeal, learned counsel for the appellant submitted that no definite role was ascribed to the present appellant and no material has been adduced to show that A~2 had any knowledge that the money was being paid to A~1 as bribe. There is not even any suggestion, much less, no evidence to show that A~2 had any knowledge that he was being used as a conduit for the purpose of payment of bribe to A~1. It is, therefore,

submitted that the conviction is not maintainable.

10.There is no material to show about the knowledge of A~2 regarding the money being bribe. He had offered the explanation that the money was to be paid to Subbarayudu. In this connection, reference is made to the evidence of PW~1. He has only stated that A~1 asked him to hand over the money to A~2 if he had gone out for checking of shops.?

(iii).In GOVINDASAMY v. STATE reported in 2011 (3) MLJ (Crl) 455, wherein this Court at paragraph Nos.34 and 38, has held as follows:~ ?34. In the instant case, there was no complaint against the appellant / A2 by the defacto~complainant, that he had demanded any bribe from him along with A1, hence, mere recovery of tainted money by itself cannot establish the charge of prosecution in the absence of any evidence to prove the payment as illegal gratification or to show that the accused voluntarily accepted the money knowing it as bribe or illegal gratification. Similarly, when the defence raised by the accused is plausible and more probable than that of the prosecution case, the defence of the accused has to be accepted and as per criminal jurisprudence, benefit of doubt should always be given to the accused.

38.On the aforesaid facts and circumstances, I find it just and reasonable to allow the criminal appeal, holding that the prosecution has not established the alleged guilt against the appellant / A2 for convicting the appellant / A2, under Sections 7 and 13 (2) r/w 13 (1) (e) of Prevention of Corruption Act, accordingly, the conviction and sentence imposed on the appellant / A2 by the Additional Sessions Judge~cum~Chief Judicial Magistrate, Karur (Special Judge), in Special Case No.1 of 2000 is liable to be set aside, to meet the ends of justice.?

12.Per contra, the learned Additional Public Prosecutor appearing for the State would fairly submit that the appeal filed by Sate as against the acquittal of A.2 was dismissed and hence, he did not dispute the said acquittal. He would further submit that in the present case, the receipt of the bribe amount by A.1 is well established by the prosecution by examining P.W.2 and the official witness P.W.3. Once the accused persons obtained the bribe amount, it is for them to rebut the presumption contemplated under Section 20 of the Prevention of Corruption Act. In the present case, though there are some discrepancy in the evidence of P.Ws.2 and 3, however their evidence is clearly corroborated in respect of the receipt of bribe amount by A.1 and thereafter, handed over the same to A.3. In the present case, A.3 is an abetter abetting the crime with A.1 and the same was established before the Court. The trial Court after considering the entire evidence and other materials on records, has rightly convicted accused, which need not be interfered with. Further, in the present case, the land acquisition proceedings was also recovered from A.1 immediately after the trap proceedings, by way of recovery mahazar. Hence, the motive for obtaining the illegal gratification is well established before the trial Court. Hence, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

13.Upon a careful re~assessment of the evidence and the judgment of the

Trial Court and the other materials on record and the submissions made by the learned counsel appearing for the parties, the following points arise for consideration in these Criminal Appeals:

(i). Whether the trial Court was right in the finding that the appellant/A.1 is guilty under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988?

(ii) Whether the conviction and sentence imposed by the Trial Court warrant any interference?

(iii).Whether the third accused abetted A.1 and whether the prosecution established necessary ingredients under Section 12 of the Prevention of Corruption Act?

14.P.W.1~Nallan, Additional Assistant Director, Land Survey Department, is a sanctioning officer at the relevant point of time and he sanctioned the prosecution against A.1 and A.3. P.W.4~Jayashree, District Collector, Trichirappalli, is a sanctioning officer and he sanctioned the prosecution against A.2. Here sanction of the prosecution is marked as Ex.P7. However, the learned counsel have not attacked the sanction of the prosecution. P.W.2 is the de~facto complainant. P.W.3 is a shadow witness, who accompanied with P.W.2. P.Ws.5 to 11 are revenue officials, who were examined for the purpose of proving the land acquisition proceedings. P.W.12 is the Trap Laying Officer. P.W.13 is an investigating officer, who filed a final report before the trial Court.

15.The entire prosecution case revolves around the evidence of P.Ws.2, 3 and 12~Trap Laying Officer. It is well~settled that the evidence of trap witness must be decided in the same way as that of any other interested witness. This Court has to look for independent corroboration before convicting the accused person. However, the evidence of bribe giver has to be scrutinized very carefully and it is for the Court to consider the appropriate evidence in the proper manner and decide whether the conviction is based upon it or not in the circumstances of the case. Therefore, as a Rule of Law, it cannot be laid down that the evidence of every complaint in a bribe case, should be corroborated otherwise it cannot be acted upon. In the light of the above facts and circumstances of the case, whether the corroboration is necessary and if so, to what extent and what should be depends upon the natural circumstances of the case, is the only short point that has to be considered in these appeals.

16.The evidence of P.W.2~defacto complainant indicates that he is a practising Advocate and he is a resident of Pitchandar Koil Village, Mannachannallur Taluk, Trichy District and he owned 20 cents of land in Survey No.63/2B. The said land was situated adjacent to the proposed four way project from Samayapuram Tollgate to Chennai, in which, the Highways Department made a paper publication for acquiring 105 square meter from his land and he made an objection and after considering the objection the same was rejected and an extent of 105 sq.meter was acquired and thereafter, in

the year 2009 award was passed fixing the compensation and in order to receive the compensation he went to the office of Special Tahsildar, Land Acquisition on 24.02.2010 at 2.00 p.m. and met the Special Tahsildar, Land Acquisition, the second accused and asked her to issue a cheque. The second accused issued a cheque for an amount of Rs.5,46,693/~. P.W.2 received the cheque, after recording his objection. The second accused told with P.W.2 that he could appeal to the Collector for higher compensation after 10 to 15 days and she want to discuss a matter with him and accordingly, on 10.03.2010 at about 12.20 p.m., P.W.2 went to the office of the Special Tahsildar and on verification found that the second accused was not available in the office. The first accused informed P.W.2 that the second accused had been transferred and had been left out and thereafter, P.W.2 met the first accused in his office and A~1 invited P.W.2 and enquired whether he came for collecting the proceedings, for which, P.W.2 replied -yes- and thereafter, the first accused demanded Rs.5,000/~ for furnishing the award proceedings. P.W.2 enquired why he has to pay Rs.5,000/~, for that, the first accused instructed P.W.2 that he should pay separately to the second accused. Since P.W.2 was hesitating to pay the amount, for which, A~1 replied that without paying any amount, that too, for the more compensation awarded, the proceedings cannot be issued. Even A~2 was transferred, P.W.2 necessarily to satisfy A~2 for the purpose of collecting the proceedings. Further, P.W.2 enquired about the residence of A~2 and again after collecting the address, he went to A~2-s house and informed the A.1-s (Sirajudeen) information, in which, A~2 replied that she only processing the matter and therefore, she demanded only Rs.1,000/~ and the said amount may be handed over to A~1 and thereafter she will collect the amount from A~1. Immediately, P.W.2 left the place. Thereafter, P.W.2 lodged a complaint against the accused officer. After completing the initial formalities, P.Ws.2 and 3 went to the office of the first accused and P.W.2 handed over the sum of Rs.6,000/~ to the first accused. The first accused received the same by saying that he could pay the same and receive the proceedings on the previous day itself and for which, P.W.2 said that he had no money on the previous day and P.W.2 said that as instructed by the first accused, he met the second accused at her residence and she instructed him to pay a sum of Rs.1,000/~ for her and also instructed to pay the same with the first accused. Thereafter, the first accused after seeking P.W.2 doubtfully told as to whether the currency notes are genuine and then received the same. Thereafter, the first accused called the third accused and handed over the said sum of Rs.6,000/~ with him. Thereafter, P.Ws.2 and 3 came out of the office and gave the pre~arranged signal. Immediately, P.W.12 went inside the office of the first accused and identified the accused. Thereafter, P.W.12 recovered the tainted money and compared the same with the entrustment mahazar, which is found tallied.

17.On perusal of the evidence of P.Ws.2 and 3 is well corroborated with each other in respect of the receipt of the amount from P.W.2. Admittedly, the defacto complainant-s land was acquired by the office of the accused persons, in which, A.1 employed as Surveyor and on the particular day in the presence of shadow witness, initially, A.1 obtained and collected the bribe amount with his hands and thereafter, handed over the same to A.3. Immediately, thereafter, P.W.12 conducted Phenolphthalein test and the same was proved. When such being the position, it is for the accused to rebut the

presumption contemplated under Section 20 of the Act. Section 20 of the Prevention of Corruption Act, reads as follows:~

?20. Presumption where public servant accepts gratification other than legal remuneration.~ (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub~section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case maybe, without consideration or for a consideration which he knows to be inadequate.?

18.This Court well aware of the decision of the Hon-ble Apex Court in MUKUT BIHARI AND ANOTHER v. STATE OF RAJASTHAN, reported in 2012 (11) SCC 642, wherein it is observed that -the law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act, 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the gult, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act, 1988 by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act, 1988.-

19.In the present case, though the learned counsel appearing for the appellant/A.1 would submit that there was a previous enmity in between them while measuring the property and further P.W.2 is a litigant and initially he was implicated to the proceeding under the Prevention of Corruption Act and other cases, that allegation is not sufficient to disprove the prosecution case. In the instant case, the prosecution discharged the initial burden and established that A.1 obtained illegal gratification from P.W.2 for furnishing the land acquisition proceedings for the purpose of filing an appeal before the District Collector. When that being the position, it is for A.1 to disprove the prosecution case. In the case on hand, there is no evidence either directly or circumstantial that the money was received not on illegal gratification, but for other purpose. The accused did not adduce any evidence before the Trap Laying Officer at the time of trap proceedings or at the time of 313 proceedings. Hence, it is found that the prosecution has placed materials proving that the appellant/A.1 had demanded and accepted the bribe money from the defacto complainant. Therefore, the trial Court has rightly held that the prosecution has established the case beyond reasonable doubt, as against the first accused and the trial Court has also rightly found that the first accused was guilty and accordingly, convicted him. Having gone through the Judgments and careful analysis of the findings

rendered by the court below and other relevant materials, I have no hesitation to confirm the conviction of A.1.

20.However, the learned counsel for the appellant/first accused would submit that the appellant is now aged about 65 years and he is suffering from old age ailments and hence, he requested this Court to show some leniency and prayed for reduction of sentence.
21.Considering the passage of time and the age of the appellant/first accused, this Court is inclined to reduce the sentence imposed on the appellant under Section 13(2) r/w Section 13(1) (d) of Prevention of Corruption Act, 1988, to minimum sentence of one year from two years.

22.Accordingly, the Criminal Appeal (MD)No.207 of 2014 is partly allowed in the following terms:
(i).The conviction of the appellant/first accused in S.C.No.75 of 2012, on the file of the learned Special Court for Trial of Cases under The Prevention of Corruption Act, Trichirappalli, is confirmed, however, the substantive sentence of imprisonment imposed under Section 13(2) r/w Section 13(1) (d) of Prevention of Corruption Act, 1988, by the trial Court is reduced to one year from two years, with a fine of Rs.5,000/~, in default to undergo simple imprisonment for three months.

(ii).The conviction and sentence imposed, under Section 7 of the Act, on appellant/first accused, is confirmed.

(iii).The sentence imposed on the appellant/first accused under Sections 7 and 13(2) r/w 13(1)(d) of the Act, shall run concurrently.

(iv). The period of sentence already undergone by the appellant/first accused shall be given set off as required under Section 428 of the Code of Criminal Procedure. Bail bonds executed by the appellant/first accused and the sureties shall stand cancelled.

(v).The concerned Sessions Judge shall take steps to secure and commit the appellant/first accused to prison with appropriate warrants for the accused to serve out the remaining period of sentence.

23.In respect of the appellant/A.3, there is no dispute about the availability of A.3 at the time of trap proceedings. However, P.Ws.2 and 3 did not make any allegation as against A.3 with regard to the demand and acceptance of bribe amount and he simply standing in front of A.1 and A.1 after collecting the money from P.W.2, on seeing A.3, handed over the said money to A.3 and A.3 being the subordinate of A.1, without knowing the consequences, he possessed the money. Mere possession and recovery will not constitute the offence against A.3 and mere recovery is not sufficient to prove the guilt against A.3, as if he is aiding A.1. In fact, A.3 had no knowledge about the money handed over by A.1, as bribe money and no material was placed before this Court, except the recovery, that A.3 abetting the alleged illegal gratification. There is no evidence that A.3 have intention to aid A.1 for receipt of the illegal gratification. The third accused has possessed the tainted money only at the bequest of A.1 and therefore, there

is no demand of bribe by A.3 for discharge of any official act and there is no acceptance of money on his own. Therefore, I have no hesitation to hold that there is no offence committed by A.3. Thus, all would go to show that the prosecution has not proved the case beyond reasonable doubt as against A.3. In the fact of such doubts available, this court is of the considered opinion that it is highly unsafe to sustain convict the appellant/A.3.

24. In the result, Crl.A.(MD)No.185 of 2014 is allowed and the Judgment of the learned Special Judge for Trial of Cases under The Prevention of Corruption Act, Trichirappalli, in Special Case No.75 of 2012, dated 12.06.2014, is set aside. The appellant/A.3 is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

27.04.2019

To

1.The Inspector of Police,
Vigilance and Anti~Corruption,
Trichy.

2.The learned Special Judge for Trial of Cases
under The Prevention of Corruption Act,
Trichirappalli.

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.